

REMARKS

Applicants thank the Examiner for the consideration given the present application. Claims 1-20 are pending in the present application. Claims 1 and 19 have been amended herein. No new claims have been added.

Specifically, Claims 1 and 19 have been amended to add the language “outwardly facing” to describe the annular protuberance of the present invention. Support for this addition is found at page 11, lines 6-12.

Synopsis of the Present Invention

The present invention relates to a packaging system that provides fresher, more aromatic, roast and ground coffee. The packaging system comprises a container having, among other things, a substantially outwardly facing annular rim so that static vertical loads are transferred through the body portion of the container rather than through the protuberance. It is believed that transferring the forces exerted by a load positioned on top of the container can reduce overall stresses at the junction of the protuberance and the body portion. This reduction in stress facilitates producing a container having a smaller overall wall thickness. Additionally, providing the protuberance in an outwardly facing orientation external to the body allows the protuberance to be supported during the sealing process, which is believed to result in a higher quality seal that keeps the coffee product within the container fresher. Furthermore, by supporting the protuberance, production can be sped up, thereby reducing production costs further.

Rejection Under 35 USC §102

Claims 1, 4, 5 and 11-20 have been rejected under 35 U.S.C. § 102 (b) as being anticipated by Hargraves, U.S. Patent No. 4,966,780. According to the Examiner, Hargraves discloses a packaging system comprising, among other things, a container having a closed bottom, an open top, and a body comprising an enclosed perimeter between said bottom and top. The Examiner states that Hargraves teaches that the container has a “protuberance continuously disposed around the perimeter of the body wherein the protuberance forms a ridge external to said body.”[*Citing col.13, lines 43-*

45]. Moreover, the Examiner states that the container is made from polyester having a tensile modulus number of from about 35,000 psi to about 650,000 psi, and as a result, it is inherent that the Hargraves container also have a top load capacity of at least about 16, or even 48 pounds. The Examiner then states that Hargraves discloses a flexible comprising a one-way valve disposed thereon. Furthermore, the Examiner states that Hargraves teaches that the container has an overcap and rib, contains roast and ground coffee and is flushed with an inert gas, such as nitrogen or carbon dioxide. Applicants respectfully traverse the Examiner's rejection.

Under 35 U.S.C. § 102, a claim is anticipated only if each and every claim limitation is found, either expressly or inherently disclosed, in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. See *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 43 USPQ2d 1481, 1490 (Fed. Cir. 1997). Additionally, there must be no difference between what is claimed and what is disclosed in the applied reference. See *Scripps v. Genetech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Applicants respectfully assert that Hargraves fails to anticipate the present invention as amended herein because it fails to teach each and every claim limitation. Specifically, Applicants respectfully assert that Hargraves fails to teach an outwardly facing annular protuberance as set forth in presently amended Claims 1 and 19. The outwardly facing annular protuberance of the present invention helps ensure that static vertical loads are transferred through a body portion of the container rather than through the protuberance. It is believed that transferring the forces exerted by a load positioned on top of the container can reduce overall stresses at the junction of the protuberance and the body portion. This reduction in stress facilitates producing a container having a smaller overall wall thickness.

In sharp contrast to the outwardly facing annular protuberance of the present invention, Hargraves teaches an inwardly facing ledge. Indeed, at Col. 13, lines 43-45 as cited by the Examiner, Hargraves discloses that "[a] ledge is preferably provided on the inside surface of the container near the discharge orifice of the container to prevent the

filter from dropping inside. The ledge of Hargraves is clearly different from the present outwardly facing annular protuberance as the ledge not only faces inwardly, but *must* do so to sufficiently support the filter.

In view of the foregoing, Applicants respectfully assert that Hargraves fails to teach each and every limitation of the present claims, as amended herein. Therefore, Hargraves fails to anticipate the present invention and as such, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 102.

Rejection under 35 USC §103

Claims 2 and 3 have been rejected under 35 USC §103(a) as being obvious over Hargraves as applied above and further in view of Genske, U.S. Patent No. 5,160,767. Moreover, Claims 8-10 are rejected under §103 as being obvious over Hargraves as applied previously, and further in view of Ota, U.S. Patent No. 4,890,752. Finally, Claims 6 and 7 are rejected under §103 as being obvious over Hargraves as applied previously and further in view of Haas, U.S. Patent No. 5,085,034.

In general, the Examiner relies on Hargraves to teach a flexible container having, among other features, an external protuberance as described previously in the discussion of the Rejection under § 102. To arguably remedy any deficiencies in Hargraves, the Examiner relies on Genske to teach a removable flexible laminate closure, Ota to teach plastic containers with handles and Haas to teach containers made of a polyolefin. Applicants respectfully traverse all of these rejections for the following reasons.

The Examiner bears the burden of factually supporting any prima facie conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fe. Cir. 1983). If the Examiner does not prove a prima facie case of unpatentability, then without more, the Applicant is entitled to grant of the patent. See In re Oetiker, 977 F.2d 1443.

To establish a prima facie case of obviousness under 35 U.S.C. §103, the Examiner must meet three basic criteria, one of which is that all claim limitations must be taught. See, for example, In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991). Applicants

respectfully assert that the references cited in the Office Action fail to teach all claim limitations, and thus, fail to establish a prima facie case of obviousness under 35 U.S.C. §103. Moreover, Hargraves teaches away from the present invention, and for this further reason, fails to obviate the present invention.

Applicants respectfully assert there is no teaching of all the claim limitations. Specifically, there is no teaching in Hargraves of an outwardly facing annular protuberance as described in the presently amended Claims 1 and 19. As aforementioned, and as cited by the Examiner, Hargraves arguably discloses an inward ledge that supports a filter, however, Applicants respectfully assert that this is not the same as the present outwardly facing protuberance, which functions to distribute the top load to the remainder of the container. Moreover, the remaining cited references do nothing to remedy this deficiency of Hargraves. Therefore, there is no teaching of all claim limitations. For this reason alone, Applicants assert that a prima facie case of obviousness has not been established.

Furthermore, a reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. See W.L. Gore and Assoc., Inc. Applicants respectfully assert that Hargraves, in fact, teaches away from the present invention, by stating that “[a] ledge is preferably provided on the inside surface of the container near the discharge orifice of the container to prevent the filter from dropping inside.” See Col. 13, lines 4-45. From this passage, it is clear that the invention claimed in Hargraves does *not* comprise an “outwardly facing annular protuberance.” Applicants respectfully assert that because Hargraves states that an *inwardly* (emphasis added) directed ledge is needed to support the filter, Hargraves teaches away from the present invention. For this additional reason, Applicants respectfully assert that the present invention is not obvious over Hargraves.

Findings of fact relied upon in making the obviousness rejection must be supported by substantial evidence within the record. See In re Gartside, 203 F.3d 1305, 1315 (Fed. Cir. 2000). Applicants respectfully assert that, for the above reasons, the Office Action fails to support the obviousness rejection with substantial evidence, and

thus, fails to establish obviousness under 35 U.S.C. § 103. Therefore, Applicants respectfully request the rejection under 35 U.S.C. §103 be withdrawn.

Double Patenting Rejection

Claims 1-20 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting for being unpatentable over claims 1-38 of co-pending Application No. 10/155338. Included with this response is a Terminal Disclaimer, disclaiming the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C § 154 to §156 and §173 as presently shortened by any terminal disclaimer of U.S. Application No. 10/155338. Accordingly, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn.

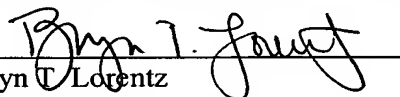
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §§ 102 and 103 as well as the Double Patenting rejection. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-20 is respectfully requested.

Respectfully submitted,

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